Long
Opinion on two
important cases

Hon. Benjamin Franklin Long

JUDGE OF THE SUPERIOR COURTS
OF NORTH CAROLINA

Published Opinions on Two Important Cases:

State vs. Southern Railway Co., et al

State vs. George Hall

Together With an Introductory Letter to his Son

BY

HENRY JEROME STOCKARD

Raleigh, N. C., December 25, 1912.

Mr. Mackendrie R. Long,
Amsterdam, Holland.

Dear Sir: It happened I was near at hand and had opportunity to note specially the trial of two important cases by your father, both of which attracted national attention.

The pursuit of your studies has detained you from home so long I can understand how you may not have been able always to keep fully informed as to the march of events in your native State, even though your father's labors may, at times, have been connected with these events. I'm quite sure the perusal of this little pamphlet will furnish you information you have not fully possessed before.

Your father has performed certainly two distinct services for the State and country, either of which should and will render his name rememberable. One of these is his decision in the Rate War Case, which led to a compromise of passenger rates between the South Atlantic States and the railroads, 1907 and 1908. The other is his judgment in the Lynching Case, 1906, when he placed lynching under ban by sentencing to the penitentiary for fifteen years a white man, a member of a mob, for his part in the notable lynching of several negroes in Rowan County.

A significant fact related to the latter case is, there has not been a lynching in North Carolina since that trial; and, in connection with the former case, there are several facts worthy of note.

Layman though you may be, it may be a matter of historical interest to you to know that, so far as I'm advised, there never was but one opinion of a Judge of the Supreme Court of the United States that resulted promptly in an amendment to the Constitution of the United States.

On February 18, 1793, James Iredell delivered his famous dissenting opinion in the case of *Chisholm Exrs. v. Georgia,* 2 Dallas, 419 (United States Supreme Court Re-

ports). The majority opinion held that "a State could be made a party defendant in the Supreme Court of the United States at the suit of a private citizen of another State for debt."

Carson, in his "History of the Supreme Court of the United States," says: "Iredell alone dissented in an opinion of which it has been truly declared that it enunciates either directly or by implication all the leading principles of what has become known as State's Rights Doctrine, and which, as a mere legal argument, was far superior in closeness of reasoning to Wilson's or Jay's."*

Two days after the opinion was delivered, the *Eleventh Amendment* to the Constitution was proposed in Congress, and formally acted upon by that body December, 1793, and declared adopted by the several States, January 8, 1798.

While your father was giving interpretation to a plain criminal statute and enforcing it, in the rate case—incidentally—the action of the Federal Judge to interfere required his interpretation of this Eleventh Amendment—109 years after its ratification.

His own adopted county of Iredell was named after Judge Iredell. Isn't it a strange coincidence that a lawyer (country lawyer at that) from Iredell was called upon in a crisis to give interpretation to this creature of the fundamental law, born of the brain of Judge Iredell (a country lawyer) discovered and put on the Supreme Court bench in 1792 by Washington?

I present in this pamphlet only a few opinions selected from a large number of leading journals of the country, which, I hope, may prove an acceptable holiday tribute; while, at the same time, it will preserve to you and his kindred a record of which I, as one of the latter, am proud.

Yours truly,

HENRY JEROME STOCKARD.

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*Carson's Hist. Sup. Court U. S., Vol. 1, pp. 170-177.

The Rate War Case, 1907

(Raleigh News and Observer, August 1907.)

In July it was the privilege of Judge Long to be called upon to serve his State at a moment when there was need of a man who had the firmness to meet the call of a crisis and the poise to hold the straight course of his office and its responsibilities without wavering on the one hand or forgetting himself in passion on the other. In the face of a notorious violation of the law he did not hesitate either on account of the prominence of the criminal or the power of the Court with which it was allied to demand of the grand jury that it bring its indictments for crime. Surrounded by zealous men of the people applauding his course, he sank whatever feeling of a partisan he may have had to the end of the orderly and legal determination of the question at issue. Without consultation, without suggestion, without feeling, without any motive except to hold the scales of justice evenly, he delivered his now famous charge to the grand jury, touching upon the criminal section of the rate law. The charge of Judge Long was read in every neighborhood in North Carolina, and the substance of it was read and discussed in every State in the Union. With calmness, with deliberation, with every proper consideration to the accused the cases were heard in Wake court. That charge by Judge Long and his subsequent firm and able discharge of a high duty with calmness in a time of much public excitement will always live in North Carolina. It was noticed that North Carolina, as a sovereign State, would proceed with the administration of its criminal law without being influenced in the least by injunctions or threats from any quarter, judicial or otherwise. From the day he delivered the charge until the hour when he fixed the fine upon the Southern Railway and its agent, and thereby upheld the dignity of the courts of North Carolina, Judge Long showed the highest judicial qualities and in all the days of tense feeling was as deliberate and judicial and fair as in the trial of the most trifling criminal case that

came before his court. It is such judges and such prompt execution of the criminal law that are needed to give public confidence and honor to the judiciary. His quiet resolve to enforce the law against a powerful railroad just as he would enforce it against the humblest violator of the law gave fresh faith and trust in the judicial department of our State government. His rulings will stand approved by the test of time.

After the Wake County grand jury had found the indictments, the solicitor, burdened with a heavy docket, requested counsel to assist in the prosecution. Upon application through Judge Long for counsel, Governor Glenn employed ex-Governor Aycock and Speaker Justice as general counsel to prosecute in Wake or elsewhere and to advise with him in all matters growing out of the litigation, and Mr. S. G. Ryan to assist in the Wake cases.

(Philadelphia Record, September 1, 1907.)

No legal controversy of recent years has aroused such general interest as that regarding the rights of States and the constitutional limits of the powers of the Federal Judiciary, which is now on in North Carolina. * * *

(Col. F. A. Olds in Philadelphia Record, September 7, 1907.)

* * * Nobody had ever construed the rate law in North Carolina or passed upon it. Judge Pritchard, on June 29, found he could not declare it invalid upon the facts before him, but he undertook to suspend it. When this was done it fell to the lot of Judge Benjamin Franklin Long, then holding the Superior Court in the county of Wake, of which Raleigh is the county seat, to take up the Legislative act fixing the rate at 2¼ cents, and also to take up Judge Pritchard's order on the eighth of July, and to say what these things all meant and whether North Carolina in one of its own Courts had a right to enforce its own laws, as enacted by its own Legislature, and as directed by its own supreme lawmaking power, and further, whether a Federal Judge had

the jurisdiction to do what Judge Pritchard had done, and whether Judge Pritchard's order suspended the North Carolina law.

The rulings of Judge Long are, of course, well known. They put the machinery of the North Carolina criminal laws in motion. If the trial had failed the law would not now be in force. If Judge Long's ruling would and could take the case direct and straight to a verdict and judgment without clash between the State and Federal Courts then the battle in the State Court was won. The remainder was for the Supreme Court to pass upon.

From July 8th to the 15th of that month Judge Long, so far as the officers of the State were concerned, was supported by Solicitor Armistead Jones alone. Public opinion, due deliberation, and the justice of the thing, one or all, brought to the aid of Judge Long on the 15th of July ex-Governor Charles B. Aycock and Speaker Edward J. Justice, of the Lower House of the Legislature, to aid Solicitor Jones. A new statute authorized the Governor to appoint counsel to aid the Solicitor and the Governor took this step. This was, in fact, all he could do, unless a Judge had informed him that the process of a State Court was not being obeyed, had set out that the civil law was not powerful enough and had asked for troops. But there was really no danger of a call for troops being made. When Judge Long pronounced judgment on the Southern Railway he gave it the option to obey the law, pending the appeal to the Supreme Court and to take a nominal fine; that is, to put the rate law into effect at once and let the matter go before the higher Courts in the quiet and regular way, and thus fully test the question whether Judge Long was right or wrong in his ruling.

It is a matter of fact that while Governor Glenn was considering what was to be done, and getting ready to deliver his attack upon the railroad, Judge Long acted, and that act was one of the most momentous in all the State's history. The Governor, therefore, though head of the State, became a

follower of the Judge in action, and very properly so, and this shows that the Judge not only acted without direction, but upon his own motion and force.

The public sentiment of North Carolina, and that without regard to politics, is behind Judge Long.

(From Governor Glenn's letter to the public, July 29, 1907.)

* * * On the 8th of July, 1907, the Hon. B. F. Long, one of the ablest and most conscientious judges in the State, of his own motion, hastened action by boldly and ably charging the grand jury of Wake County, that it was its duty to immediately indict the railroads for violating the rate law. * * *

(Press Dispatch, August 4, 1907.)

* * * The stubborn resistance in North Carolina, begun in the county of Wake, was as patriotic and as far-reaching as the Mecklenburg Declaration of 1775. If the public had not supported Judge Long neither North Carolina nor Virginia would have been able to enforce their laws. * * *

(Judge R. W. Winston in South Atlantic Quarterly, October, 1907.)

* * * During the month of July, Wake Criminal Court convened in Raleigh, Judge Long presiding. In addressing the grand jury Judge Long, as is the North Carolina custom, delivered a charge reminding the jury of its duties towards the State and the people thereof, and directing them very particularly to inquire whether the railroads of the State were violating the criminal law in selling tickets at a higher rate than that provided by the statute, to wit: 2¼ cents a mile. In consequence of this charge Southern Railway Ticket Agent Green was indicted for selling a ticket in Raleigh at a rate exceeding 2¼ cents. * * * Trial Judge Long held that the act was constitutional; that the Criminal Court of Wake County had jurisdiction; that the act was self-executing; that it stood alone and was not to be taken in connection with other railroad legislation enacted

at former sessions of the legislature. The trial judge likewise held that the act did not impinge upon the Fourteenth Amendment to the Constitution of the United States. The jury found both the ticket agent and the Southern Railway guilty of a misdemeanor in selling a ticket at a higher rate than 2¼ cents. The agent, promising not to sell tickets again, was not punished, and the same terms were offered to the Southern Railway if it would obey the act of 1907. The Southern Railway refused to desist from violating the act and was fined by the court the sum of $30,000. From this judgment an appeal was taken to the Supreme Court of North Carolina, where it will be argued during the present month.

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It is interesting to note that while Ticket Agent Green was in custody of the sheriff of Wake County, i. e., during his trial, the Southern Railway applied to Judge Pritchard for a writ of *habeas corpus* asking his discharge on the ground that he was protected by the injunctive order theretofore granted by the Circuit Court. There is no doubt that the ticket agent would have been taken from the Wake County sheriff by a United States marshal and set at liberty by Judge Pritchard, who went from his home in Asheville to the Criminal Court in Raleigh, but for a *coup d' etat* of the Wake Criminal Court. Judge Long released the ticket agent from the sheriff and took him in his own custody.

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The writ of *habeas corpus* was not executed. * * *

(Baltimore Sun, December 5, 1907.)

The right of the State to enforce its criminal laws without interference by the national government or its courts is uncompromisingly upheld by the North Carolina Supreme Court.

In other words, the Federal courts, it is declared, have no power to interfere by injunction with the operations of the State courts in the administration and enforcement of the State laws.

The bill now pending in the Federal court to restrain the State officials from enforcing the rate law is pronounced to be undoubtedly an action against the State itself, and, therefore, not to be maintained, under the Eleventh Amendment to the Federal Constitution.

On the other hand, the indictment and criminal proceedings against the Southern Railway are dismissed, the court affirming that the rate law, while providing for indictment of the officers and agents of a corporation, does not contemplate the indictment of the corporation itself, preferring to enforce obedience by means of penalties, to be sued for by the individual aggrieved.

The Legislature did not, it is pointed out, intend to inflict double punishment on the corporation, and a corporation can not be an accessory to the act of its own agent.

The issue is expected to be fought out in the United States Supreme Court.

(Washington correspondence to the New York World.)

Washington, D. C., July 23.—President Roosevelt has been given the most severe shock of his political career by the action of Circuit Judge Jeter C. Pritchard in granting a writ of *habeas corpus* to employees of the Southern Railway, convicted of violating the State laws of North Carolina. Nothing more unfortunate and regrettable could have happened to the president at this time. Administration lieutenants here privately admit that the president has been hung up by the ears through the procedure of Judge Pritchard.

Neither President Roosevelt nor high department of justice officials desired Judge Pritchard to issue his writ of *habeas corpus*. Expert legal authorities declare that he has no jurisdiction in the matter at issue. It is believed here that Judge Pritchard was led away by political motives or misconceived ideas of duty and committed a grievous blunder, which threatens to entail serious difficulties upon the administration.

Officials in the Department of Justice hold that the case in North Carolina was purely a question for the State courts

to determine, and that Judge Pritchard, when appealed to by the Southern Railway should have refused to act.

They say the road had ample redress; that it could have obtained a stay of execution and taken an appeal to the Common Pleas Court, and from that to the State Supreme Court. From that tribunal an appeal could have been taken to the United States Supreme Court. These officials say that the action of Judge Pritchard establishes the first precedent of record in which Federal courts have interfered in a purely State matter. They refer to the recent course pursued by a Federal judge in Nebraska, when a similar action was brought before him, who refused to assume jurisdiction and said it was a question for appeal to the various State courts. They expected Judge Pritchard to follow the same course.

It is frankly admitted that President Roosevelt would like the Federal government to exercise control over interstate railroads without reference to State laws, but he is convinced that this can not be done without further legislation by Congress. This question was raised and discussed when J. Pierpont Morgan, Charles S. Mellen, A. B. Stickney, B. F. Yoakum, and other leading railroad magnates conferred with the president, each being told that further legislation by Congress was desired to increase the jurisdiction of the government over transportation companies. Each of these men urged the president to make a definite statement in a speech or otherwise, thereby averting panicky conditions and preventing depreciation in the value of railroad securities.

The president finally yielded to this persuasion, and in a speech took the Knox idea that the line between interstate and intrastate commerce is so delicate that great care must be exercised in determining it. He expressed the opinion that the Federal government should have full control and that legislation to that end should be enacted. Inferentially, he admitted that the government could not interfere with a purely State affair in which railroads are concerned. He decided to take no railroad stand until the necessary laws were enacted by Congress.

It is precisely because of this attitude that the president is so shocked at the stand taken by Judge Pritchard. When the situation became acute in North Carolina the president grew apprehensive and uneasy. He requested Attorney General Bonaparte to avert the threatened clash between the Federal and State courts. Assistant Attorney General Edward T. Sanford was then taking his vacation in North Carolina. He was ordered by Mr. Bonaparte to see the officials of the Southern Railway and induce them to secure a stay of execution and take successive appeals through the various State courts until their case would be brought to the United States Supreme Court, where it was promised expedition should it be requested by the Department of Justice. He was not instructed to see Judge Pritchard, as such a course might be construed as interference by the executive with the judiciary.

(Raleigh News and Observer, January 6, 1912.)

Hon. Benjamin Franklin Long of Iredell, long Superior Court Judge, announces that his name will not be presented for nomination as Associate Justice of the Supreme Court. He is one of the ablest and most useful of our Superior Court judges, and in every time of crisis gave evidence of courage and fidelity, as well as of marked ability. The judges regard it as a promotion to be taken from the Superior Court to the Supreme Court bench, but there is no comparison in the good that can be done in the two positions. A Supreme Court judge holds an exalted and responsible position, but the Superior Court judge holds a position equally as exalted with tenfold more opportunity for usefulness. The truth is that the Superior Court judge holds the biggest office in the State for its effect upon the people. When he goes to hold court, the county gathers to hear his charge to the grand jury. The right sort of judge by his charges, his sentences, his wise upholding of law, is the only great official who directly touches the lives of the masses. It is to the credit of those judicial officers that most of them appreciate

the door to usefulness, enter it, and are the agencies of education and law enforcement.

Judge Long has made a great Superior Court judge, and while his friends will be disappointed that they can not vote for him for a place on the Supreme Court bench they must recognize that his position is one in which he can exert a wider influence for good than in any other official position in the State.

It has been the duty of Judge Long to preside at two trials that have become celebrated in the annals of North Carolina—the trial of the Southern Railway agent in Wake County who, by instructions of the president of the Southern Railway, violated the rate law of the State, and the Shemwell case, where the defendant held up a Southern Railway train by drawing a pistol on the railroad conductor. In both cases Judge Long held the scales of justice even and imposed just but not severe sentences. His action in the case in Wake County was of national interest and importance. The General Assembly had passed a law. The Southern Railway defied it and went into a federal court where it obtained an injunction against the State law. It was a time of deep feeling. Would North Carolina abdicate? Would its courts lie down and permit the solemn acts of its legislature to be flouted? Would the judge presiding at Wake court be ignorant of the effect of no action, or would he measure up to the highest duty any Superior Court Judge has been called upon to perform in a generation? These were the questions uppermost in the public mind, debated by the people and discussed by the press. Judge Benjamin Franklin Long was the Superior Court judge. He kept his own counsel and the only thing known was that after investigating the law he would obey his oath of office. When the day came, he measured up to the high duty of a judicial officer. He wanted no parade, no rigorous punishment, no persecution, but he would not tolerate any defiance of the laws of North Carolina by corporation or individual. He saved the day and when the attempt was made to defy the process of

the courts Governor Glenn, with the same courageous sense of duty as characterized Judge Long, saw to it that the laws of North Carolina were respected by the defendant corporation and all its officers and employees. That incident is one that should not be forgotten, and never will patriotic North Carolinians cease to be thankful that at that crisis Benjamin Franklin Long was presiding over Wake Superior Court and Robert Brodnax Glenn was the chief executive of North Carolina, and that these brave men truly expounded and truly enforced the laws of North Carolina. If the biggest corporation doing business in the State had been permitited then to defy the plain law of North Carolina, who would have had any respect for North Carolina laws? That courageous judge and courageous governor taught the world the lesson that North Carolina laws were to be obeyed.

(Salisbury Post, January 7, 1912.)

That was a manly statement in Judge B. F. Long's card in the *Statesville Landmark,* announcing that he would not be a candidate for the Democratic nomination for Associate Justice of the Supreme Court. He gave as his reason that Judges Hoke and Brown were serving their first terms, and he did not desire to create dissension in the party by entering the race. He also gave another reason: He did not feel like devoting his time to a campaign which he feels is needed in the discharge of his present duties.

The Lynching Case, 1906

(Charlotte Observer, August 8, 1906.)

"God Almighty reigns and the law is still supreme," is a strong sentence from Judge Long to the crowd in Rowan County court-house yesterday morning. If either of these propositions is open to doubt, then we are adrift without chart or compass. "This court will not adjourn," he added, "until this matter is investigated." Here is a man and a judge. Mobs may rage around him but they will not cause him to lose his iron nerve nor disturb his imperturbable self-control. If there be a law through which these lynchers can be reached, and he have but half coöperation in the execution of his purpose to bring them to justice, he will smite at least some of the guilty with a mailed hand.

(Indianapolis Star, August 12, 1906.)

It will be impossible to exaggerate or overestimate the tremendous service rendered to his State and to his race by Judge B. F. Long of Statesville, N. C., who has just sentenced a white lyncher to fifteen years in the penitentiary for his part in the recent murderous riot near Charlotte. Upon the perpetration of that outrage Judge Long, together with a few other high minded and courageous spirits of the State, bestirred themselves to purge the fair name of North Carolina from the disgrace that had fallen upon it. At the time of the lynching they protested vehemently and persistently against the purpose of the mob, and now their public spirit and patriotism have achieved the signal triumph of the first conviction in the State for lynching negroes. This brave and upright judge and all who have coöperated with him have rendered their fellow citizens and the cause of self-government everywhere a service which is worthy the best traditions of Carolinian chivalry and statesmanship. The virile brains and exalted sentiment that lie firmly imbedded in the historic Southern character can hardly fail to be moved by this splendid example in wise and brave administration of the law.

(Philadelphia Public Ledger, August 12, 1906.)

By a single act, made possible by a just and fearless judge, North Carolina has scored a signal triumph. It has placed lynch law under the ban and sent an exemplar of this type of anarchy to prison for a term of fifteen years. The matter was carried through with speed, but with the utmost decorum. The lynching occurred at Salisbury on Monday night of last week. On Friday of the same week the leader of the mob heard his sentence, after due trial, the jury being out thirty-five minutes.

Such a result, it will be admitted, comes to the country as a surprise. It is not in consonance with the general notion as to North Carolina sentiment. The victims of the lynchers were negroes and the mob was made up of white men. There was no doubt as to the guilt of the victims, yet there was no excuse for lynching them, as they were in jail and the formal trial would have ended their careers without disgracing a commonwealth by the manner of the climax.

The spirit of the homicidal mob is always the spirit of the criminal. Its clamor for justice is the voice of a senseless passion for violence, as well as for vengeance, which it is not the right either of individuals or of collections of individuals to inflict. In keeping with this theory was the circumstance that the man just condemned for the part he took was an ex-convict, a citizen without standing, himself a burden to the community wherein he essayed the role of moral censor. The elimination of him and his kind will be a distict uplift.

Judge Long is entitled to the gratitude of the State. A few more such men on the bench, backed by courageous officials, and lynching would become a thing of the past. He assumed the attitude that he knew to be right, and that the world approves, but that has been frowned upon by thug and ruffian until to assume it and maintain it was deemed wellnigh impossible.

(Southwestern Presbyterian, New Orleans, August 15, 1906.)

Judge B. F. Long, of North Carolina, a man for whose character, ability, and love of justice we have from personal acquaintance and experience the most profound admiration, has done much towards putting down the lawlessness of lynching by his efforts in connection with the serious outbreak in Salisbury last week. The first conviction and penalty of the kind ever secured and imposed in the State were brought about through his vigor and impartiality. All honor to the upright judge.

(Savannah News, August 12, 1906.)

Hall is the first man in North Carolina convicted of lynching, and he was convicted of lynching negroes. It is a safe proposition that there will be little, if any, more interference with the course of the law in Rowan County, or even in North Carolina. A judge has been found there with sufficient backbone to enforce the law against lynchers, and other judges will follow his example, if the necessity for doing so should arise, but it is doubtful if it will arise. It wasn't thought possible to find a jury that would convict for lynching, but sentiment is changing. There has been a conviction, and there will be no more lynching as long as the belief prevails that lynchers will be punished.

(Raleigh News and Observer, August 12, 1906.)

The conviction and sentence of George Hall, at Salisbury, for conspiring to break into the jail for the purpose of lynching the negroes charged with having committed the Lyerly murders, is of momentous importance, not only to the State, but to the entire South.

It will serve notice to the country at large that the South is not given over to lawlessness; that there is still power in the courts to punish for the crime which is the supreme con-

tempt of their authority; and that there is a public sentiment remaining among the people which will aid the officers of the law in protecting the name of the State from the disgrace of mob violence. * * * The court has so far justified its existence. If only the people shall hold up its hands to the end, no matter what the duty involves, the cause of justice and civilization will have won another notable triumph.